IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RSA No. 221 of 1996

Date of Decision : 1.10.2007

State of H.P. …Appellant.

v.

Megh Raj …Respondent.

***Coram*:**

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellant: Mr. Ashok Chaudhary, Addl. Advocate General.

For the respondent. Mr. Ramakant Sharma, Advocate.

Sanjay Karol, J (Oral).

Mr. Ramakant Sharma, Advocate has put in appearance on behalf of the respondent today and has filed memo of appearance on his behalf.

The present appeal was admitted on the following substantial questions of law:-

"1) Whether the jurisdiction of the Civil Court is barred as provided under Section 10 of the H.P. Village Common Land (Vesting & Utilization) Act, 1974 especially suit for declaration?

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

2) Whether the jurisdiction of the Civil Court is barred under Section 171 of the H.P. Land Revenue Act as amended, as in the present case proceedings are initiated under Section 163 of the H.P. Land Revenue Act?

3) Whether the respondents has failed to prove his long possession over the suit property?

4) Whether the mere misreading of a oral as well as documentary evidence on record itself amount to substantial question of law?

The present appeal arises out of the judgment and decree dated 11.3.1996 passed by the District Judge, Solan in Civil Appeal No. 26-NL/13 of 1993 titled as Ram Kishan and another v. State of H.P. & another, reversing the judgment and decree dated 29.3.1993 passed by the Sub Judge Ist Class, Nalagarh in Civil Suit No. 90/1 of 1990 titled as Ram Kishan and another vs. State of H.P. & another.

Respondents/plaintiffs filed a suit for declaration and permanent injunction inter alia claiming that due to severe flood, plaintiffs land amongst others was washed away and the Gram Panchayat, vide resolution dated 25.8.1973 allotted land to the effected persons including the plaintiffs in accordance with the Rehabilitation Scheme floated to rehabilitate the flood victims. The land was allotted to various persons in terms of the said resolution. Having been put into possession as owners, plaintiffs immediately constructed the residential house thereupon. The

notice issued by the appellants-defendants u/s 163 of the H.P. Land Revenue Act for evicting the plaintiffs from the said land was assailed.

The trial Court, based on the pleadings of the parties, framed the following issues:-

"1. Whether the plaintiff No.1 was given the suit land vide resolution No.2 dated 25.8.1973 as alleged, If so its effect? ……..OPP

2. If issue No.1 is proved in affirmative, whether the plaintiffs construction exists on the suit land since 25.8.1973, and is saved from being vested in the State as alleged? …….OPP

3. Whether the suit is bad for want of notice u/s 80 CPC?. …OPD

4. Whether the court has no jurisdiction? ……....OPD

5. Whether the plaintiff has no cause of action? …….OPD

6. Whether the plaintiff has no locus standi?….OPD

7. Whether the suit is not maintainable? …OPD

8. Relief."

Plaintiffs examined two witnesses and no evidence was led by the defendants. The trial Court while dismissing the suit held that the Court had jurisdiction to entertain the suit but however, the evidence led by the plaintiffs was not creditworthy to show that the plaintiffs were in possession of the suit land since 1973 or any construction was raised by them prior to 1990. The Court therefore, presumed the plaintiffs to be recent encroacher and dismissed the suit.

In an appeal filed by the plaintiffs , the first Appellate Court, after examining the statements of the parties and also the material on record found that the plaintiffs amongst others had also been allotted land in terms of resolution Ext.PW-1/A. The Court also held that the flood sufferers were also given a sum of Rs.1000/- for construction of their houses on the land, possession of which was given at the time of allotment.

I have gone through the record and the statements of Shri Hari Chand (PW-1) as also Shri Ram Kishan (PW-2). There from, it is clear that the land in question was allotted to the plaintiffs in the year 1973 as a part of the resolution scheme. It has come on record that the aid in question was given under the Village Housing Project Scheme through the Block Development Officer Nalagarh by the State of Himachal Pradesh. It was an undisputed fact that in the year 1973 the area in question was inundated due to un-precedent rains and floods and the property of the plaintiffs amongst others was destroyed. It is also undisputed that the scheme to rehabilitate the victim was floated and certain persons were allotted land vide resolution dated 25.8.1973 Ext.PW-1/A, copy of which was sent to the Sub Divisional Collector, Nalagarh. It has come on record that the said resolution by virtue of which the land was allotted to the persons for rehabilitation has been approved and the District Collector, vide Ext.PA regularized the allotment of all other persons.

In fact, there is no evidence whatsoever produced on record by the defendants to show that the plaintiffs had encroached upon the land in the year 1990 nor had the defendants examined any witness in order to prove its case.

During the course of the hearing, learned counsel for the appellants fairly stated that the substantial questions of law No.1 & 2 as framed at the time of admission of the appeal do not arise for consideration in the present case, and therefore, there is no need to answer the same.

For all the aforesaid reasons, I see no reason to interfere with the findings of facts recorded by the First Appellate Court and the questions of law are answered accordingly and the appeal is dismissed.

October 1, 2007. **(Sanjay Karol)**
(rana) **Judge.**